No. 4053

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

JANG DAO THEUNG,

Appellant,

vs.

JOHN D. NAGLE as Commissioner of Immigration for the Port of San Francisco,

Appellee.

APPELLEE'S REPLY BRIEF

JOHN T. WILLIAMS,
United States Attorney.

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STATEMENT OF THE CASE.

Jang Dao Theung seeks admission to the United States as the minor son of a resident Chinese merchant known as Jang Sing, also known as Jang Wey Ming, whose mercantile status is conceded, the denial being based on the lack of relationship. The case was heard before the local Bureau of Immigration and on the 16th of October, 1922, the following letter was sent to the attorney for applicant, said letter being found on page 38 of Exhibit A:

IMMIGRATION SERVICE.

In answering refer to
No. 21405/7-24

Office of the
Commissioner
Angel Island Station,
via Ferry Post
Office
San Francisco, Calif.
October 16, 1922.

Mr. C. A. Trumbly,
617 Montgomery St.,
San Francisco, Cal.

Sir:

In re: JANG DAO THEUNG, Mer. Son, ex SS Nanking, 9-12-22.

You are hereby notified that I am unable to conclude that applicant is entitled to land, the claimed relationship not having been established to my satisfaction.

A period of ten days will be allowed for the introduction of additional evidence, provided notice thereof is filed with this office within five days. Review of the record will not be permitted during the time allowed for the submission of further evidence.

Respectfully,

EDWARD WHITE,
Commissioner.

Thereafter, and on October 18,1922, the Commissioner was advised by attorney for applicant that he had no further evidence to offer and requested that the case proceed to final conclusion as soon as

possible. (Exhibit A, page 39.) On the 18th of October notice of the denial of the application to land was given to applicant's attorney. (Exhibit A, page 41.) Notice of appeal was thereupon filed for and on behalf of said applicant. (Exhibit A, page 44.) On the 20th of October applicant's attorney was given full opportunity to review the entire record in the case to that date, as Exhibit A, page 45, signed by said attorney, establishes; therefore attorney for applicant was on that date apprised of the specific and particular grounds for denial as set forth in Inspector Mayerson's report found on page 34 of Exhibit A, as follows:

U. S. DEPARTMENT OF LABOR.

IMMIGRATION SERVICE.

In answering refer to	Office of the
No. 21405/7-24	Commissioner
Jang Dao Theung	Angel Island Station,
Son of Merchant	via Ferry Post Office,
SS Nanking, 9/12-22	San Francisco, Calif.
	October 16, 1922.

Commissioner of Immigration,
Angel Island, California.

Applicant, Jang Dao Theung, age 14, single, literate, destined to alleged father, Jang Sing alias Jang Wey Ming, a domiciled merchant of Fowler, California.

The alleged father claims to have arrived in this country in 1882 and to have made two trips to China since, one departing in 1906 and

returning in 1907 Ex SS Korea, the particulars regarding this trip as to month and day of arrival and departure were not ascertained by the examining inspector at Fowler, California, however, our records division reports that it is unable to locate any trip made by a Chinese of the same name given by alleged father in 1906-1907. Even if the alleged father made a trip to China in 1906 and returned in 1907 it would have been impossible for him to be the father of a boy born in 1909.

The statements now made by the alleged father regarding the trip he claims to have made in 1906-1907 are refuted by his own testimony of November 18, 1911, at which time he was an applicant for a laborer's certificate, and at which time he stated that he had not been to China since his first arrival in 1882.

The relationship now claimed is also refuted by the alleged father's own admissions when testifying in 1911, at which time he stated he was not then married nor had ever been married.

According to the evidence at hand the claimed relationship cannot exist and I recommend that applicant be denied admission to the United States.

H. MAYERSON,
Inspector.

Thereupon attorney for applicant advised the Commissioner under date of October 20, 1922, that the alleged father had erred in stating that he had departed in 1906 and that upon examining the files

for 1907 under the name of Chin Ah Fook, the records would establish the trip to China made by the alleged father essential to establish the paternity of applicant. (See Exhibit A, page 46.) The case was thereupon re-opened for the purpose of considering further evidence and on October 24, 1922, applicant's attorney was so advised and was requested to inform the Commissioner whether he had any additional evidence to submit. (Exhibit A, page 48.) In response to said notice under date of October 25, 1922, the attorney advised that he had no further evidence to offer, this, notwithstanding the fact that he was fully advised of the grounds of denial as set forth in the report of Inspector Mayerson herein above set out. A finding was thereupon made on the hearing on the re-opening of said case and the applicant was again denied admission for the reason that the claimed relationship had not been established. (Exhibit A, page 50.) Notice of said denial was given applicant's attorney, the record was again examined by applicant's attorney (Exhibit A, p. 47) and an appeal from said denial was taken. (Exhibit A, page 53.) A report of the then Commissioner of Immigration accompanying the record on appeal in this case was transmitted October 31, 1922, to the Commissioner General of Immigration from which we quote: (Exhibit A, page 55.)

U. S. DEPARTMENT OF LABOR.

IMMIGRATION SERVICE.

Refer to
No. 21405/7-24

Port of San Francisco, Cal.,
October 31, 1922.

RECD. BU. OF IMMIGRATION
NOV. 6, 1922
MAIL AND FILES

Commissioner General of Immigration,
Washington, D. C.

In re Jang Dao Theung:

There is transmitted herewith record on appeal in the case of Jang Dao Theung, age thirteen years (American), single, literate, student, subject of China, arrived ex SS "Nanking," September 12, 1922, destined to Fowler, California, denied admission by decision of this office on the ground that the relationship claimed between the applicant and his reputed father is not established.

Local counsel, C. A. Trumbly, will be represented before the Department by Attorney M. Walton Hendry, Evans Building, Washington, D. C.

The application was originally denied on two points—(1) the presence of the reputed father in China at a time to permit of his paternity was not shown; (2) in 1911, when applying for laborer's return certificate, the reputed father stated that he had never been married, whereas

the applicant's birthdate is now given as January 12, 1909. Upon reviewing the evidence in the case, the Attorney furnished information which, in addition to necessitating a reopening of the case, removed the first ground mentioned for denial. However, the second ground remains and it is on that point that the denial of the application rests.

The next sailings of the steamship line on which arrival occurred will take place on November 4 and 30 and December 2, 1922.

It is recommended that the excluding decision entered in this matter be affirmed.

The following exhibits are attached, which kindly return: #11316/182, 18537/16-2, 10280/-152.

EDWARD WHITE,
Commissioner.

PBJ: amt
incl. #18062

It was not until approximately a month later that an effort was made to submit additional evidence in the form of affidavits for consideration by the Department on appeal, (Ex. A, p. 57), notwithstanding, according to counsel's own contention as found on pages 26 and 27 of his brief, the review on appeal is restricted to the evidence which was received and considered by the Board of Special Inquiry at the port of entry, citing Sec. 17, Act of February 5, 1917, and Rule 3, Sub. 2, 3, 4, of Chinese Rules and Regulations.

It is thought advisable to set these matters forth in such detail for the purpose of refuting the erro-

neous statements made in the opening brief of appellant to the effect that no opportunity had been given applicant or his counsel to submit, prior to the final determination by the local authorities, evidence to overcome the prior adverse statements of the father made in 1911 to the effect that at that time he was not married, had never been married, had not made a trip to China since his first arrival in the United States—all of which statements were made under oath—and which, if true, preclude Jang Sing from being the father of the applicant, who admittedly was born in 1909; (appellant's brief, pages 2, 3, 4 and 5 thereof,) and also for the purpose of explaining the remarks of the Department found in their first decision under date December 21, 1922, partly set forth herein as follows:

> "*Unfortunately, the officials who examined the alleged father,* did not question him regarding his prior testimony, and therefore the record contains no suggested explanation from him. Local counsel have requested that the case be reopened for the purpose of examining him on the point and also in order that the additional witnesses may be questioned. Inasmuch as the alleged father testified unequivocally, under oath, in 1911, and the attorney at the port, in the present case, *who had an opportunity to, and did, review the record* made no request for examination of the alleged father regarding his 1911 testimony, it is not believed that disposition of the case should be delayed for the purpose, particularly as the alleged father is in Los Angeles and is not available for examination at Angel Island.

> As to the affidavits, they have been carefully noted by the board, which has reached the conclusion that, presuming that the affiants will testify strictly in accordance with their affidavits, such testimony will not be sufficient to overcome the prior sworn statements of the alleged father."
>
> Exhibit A, p. 64 and 65.

and their telegram of December 29, 1922, which is as follows:

> "28EXBR 848A 92 325DEC29'22
>
> DX WASHINGTON DC DEC 29 1922
> IMMIGRATION SERVICE
> SANFRANCISCO
>
> REPRESENTED TO DEPARTMENT THAT COURTS DECISION CASE LOW JOE PERTINENT AND APPLICABLE CASE JANG DAO THEUNG RECENTLY EXCLUDED IF CASES SUBSTANTIALLY SIMILAR STAY DEPORTATION JANG DAO THEUNG PENDING FURTHER ORDERS AND FORWARD COPY LOW JOE DECISION CONSULT WITH UNITED STATES ATTORNEY AS TO ADVISABILITY APPEALING LOW JOE DECISION IN CONSIDERING JANG DAO THEUNG CASE DEPARTMENT GAVE FULL WEIGHT TO AFFIDAVITS OF PROPOSED ADDITIONAL WITNESSES, BUT DECLINED TO DELAY CASE TO TAKE

THEIR TESTIMONY WITNESSES APPARENTLY WERE AVAILABLE WHEN CASE ORIGINALLY HEARD BUT NOT BROUGHT FORWARD UNTIL CLOSED AND RECORD FORWARDED TO WASHINGTON

WHITE"

Exhibit A, page 80.

Of the contents of this telegram counsel for appellant herein was fully advised, the same having been sent at the expense of his representative in Washington, and the same having been set forth and made a part of his letter and argument to the local Commissioner here under date of January 4, 1923, (Exhibit A, page 91, 90-82). So that when a request was made to re-open the case, which request was granted under date January 11, 1923, counsel for appellant herein was fully aware of the position of the department in the matter, and knew well the basis therefor. Not only is this so but the re-opening of the case was made not by reason of the representations of Court Officer P. A. Robbins to the Department at Washington, because the letter of the Court Officer was not communicated to the Department at Washington prior to the order for the re-opening of the case, as appellant would have it appear. (Page 13, 14 of Appellant's brief herein). The only communication in that regard was the wire from the Commissioner here in response to the wire from the Department sent at the request of appellant's Washington attorney hereinabove set

out, which wire is set out in full at pages 70 and 69 Exhibit A, and which is in the following language:

1923 JAN 11 AM 2 36

NC

24 165 NL 1/71

F SAN FRANCISCO CALIF 10

IMMIGRATION BUREAU

WASHINGTON DC

REPLYING PARTHIAN YOUR TELEGRAM DECEMBER TWENTY-NINTH CONCERNING APPEAL CASE JANG DAO THEUNG *DECISION OF COURT IN CASE MENTIONED THEREIN NOT THOUGHT APPLICABLE* STOP OUR COURT OFFICER INVITES ATTENTION TO FAILURE OF EXAMINING INSPECTOR IN THE SOUTHERN DISTRICT TO CONFRONT ALLEGED FATHER AT THE TIME OF HIS EXAMINATION IN FOWLER OR AT ANY TIME THEREAFTER WITH SAID FATHER'S NINETEEN ELEVEN DECLARATION TO THE EFFECT THAT HE WAS NOT THEN MARRIED STOP

INSTRUCTIONS TO SO CONFRONT WITNESSES WITH PREVIOUS TESTIMONY IN CASES OF THIS CHARACTER CONTAINED IN BUREAU LETTERS SEPTEMBER TWENTIETH AND OCTOBER FOURTEENTH NINETEEN NINETEEN NUMBER

FIVE FOUR SIX NINE SEVEN SUB TWENTY THREE STOP IN VIEW FATHER NOT BEING CONFRONTED WITH HIS PRIOR DECLARATION AND THE INCIDENT PROBABILITY OF HABEAS CORPUS PROCEEDINGS BEING INSTITUTED COURT OFFICER SUGGESTS REOPENING OF THE CASE FOR THE TAKING OF THE EVIDENCE OF SUCH ADDITIONAL WITNESSES AS THE INTERESTED PARTIES MAY DESIRE TO SUBMIT AND CONFRONTING OF ALLEGED FATHER WITH HIS PRIOR DECLARATION AND THIS OFFICE ACCORDINGLY SO RECOMMENDS

WHITE

EXHIBIT "A", p. 69-70.

It appears that the letter of P. A. Robbins, Court Officer, had not been communicated to them, (it having been written on January 9, 1923, and the order for re-opening having been made on the 11th) the only communication made from the local department being the wire of January 11th hereinabove set forth to the effect that the Low Joe decision not thought applicable. It does appear that the contention made by the appellant's counsel as set forth in the letter of their Washington counsel found on page 68 of Exhibit A, and the letter of local counsel for appellant incorporating therewith the decision of Judge Dooling in the Low Joe case, found in Exhibit A, pages 91 to 82, inclusive, was adopted by the department in granting a re-hearing

and re-opening of the case, namely that the Low Joe decision, cited by them, to the effect that an administrative hearing was unfair if the witness had not been confronted with prior contradictory statements, controlled the case. The language of the Department in ordering a re-opening is worthy of notice. The decision is set forth at page 74, Exhibit A, in which the following language is found:

55245/166 SAN FRANCISCO, Jan. 11, 1923.

In re: Jang Dao Theung.

This case comes before the Board of Review for consideration of a request for reopening.

Attorney Hendry interested. No oral hearing.

The record contains the affidavits of two persons who claim to have a knowledge on the essential facts. These affidavits were considered when the case was previously before the Board of Review, and the conclusion was reached that it would be necessary to delay disposing of the case until the testimony of the affiants could be taken, provided the affidavits were considered as embodying substantially what the affiants would testify to. Counsel also pointed out in his brief that the immigration officials, in examining the alleged father, had failed to question him regarding his testimony of 1911, during the course of which he made statements inconsistent with the claims of paternity now advanced. This point likewise *was* not regarded as of sufficient importance to

call for the return of the record at San Francisco.

Counsel has invited the attention of the Board of Review to a recent decision of the District Court at San Francisco in the case of a Chinese named Low Joe whose exclusion was directed by the Department. In that case in which there were numerous material discrepancies, the Department directed reopening after one writ of habeas corpus had been dismissed, for the purpose of receiving additional evidence. The examining officers at Angel Island during the course of the supplemental hearing in the Low Joe case, failed to examine him regarding the discrepancies in the record as it was originally made up, and the court held this to be unfair. This impresses the Board of Review as somewhat remarkable, but the United States Attorney at San Francisco does not believe an appeal to be advisable, and it is, therefore, likely that the District Court, if the case of Jang Dao Theung were to come before it, would, reasoning along lines similar to the Low Joe case, hold this hearing also *unfair because the alleged father was not questioned regarding his* 1911 *testimony.* For this reason it would seem to be advisable to reopen the case, and as long as delay is now inevitable, there is no real reason for not also taking the testimony of the additional witnesses.

The Board of Review recommends that the case be reopened in order that the testimony of the additional witnesses may be taken, and also, in order that the alleged father may have

an opportunity to submit such explanation as he may be advised of his 1911 statements.

A. E. KEITZEL,
Acting Chairman, Secy. & Comr.
Genl's Board of Review.

CEB:hms

So Ordered:
ROBE CARL WHITE,
Second Assistant Secretary.

EXHIBIT "A," p. 74.

And of this decision of the Secretary, the local Bureau and counsel for appellant were both advised on the 12th of January, 1923, (Exhibit a, page 75 and 76).

Certainly no legitimate complaint can be urged by counsel for appellant that the Department granted their request, and cited as a basis for their decision the case presented by themselves as the reason for granting the same. That the Department sought to meet the standards of fairness dictated by the decisions of the Court in like cases, no blame can be charged to them for so doing even though were their own judgment to control, the case would not present to their view an element of unfairness.

A re-hearing was thereupon ordered and all the witnesses that appellant sought to present were fully heard. The affidavits theretofore submitted to the Department on appeal were returned with the complete file to the local office. The alleged father was confronted with his prior conflicting statements and

asked to give his explanation thereof which he did. The same is found on page 119, Exhibit A. His explanation is to the effect that he did not testify that he was not married in 1911. If the record so appears it could only be explained by reason of the fact that "They were talking about having a family in the U. S. and I supposed that all the questions referred to whether I had a family in the U. S. It was a misunderstanding on my part."

Also at the top of page 118, Exhibit A, he accounts for it in this wise: "The interpreter seemed to take a dislike to me and spoke very gruffly to me, didn't give me an opportunity to answer questions fully and didn't always make himself plain. It may be that he misunderstood me, but I know that he gave me the wrong impression and led me to believe that he only referred to whether I had a family in the U. S."

In answer to the attempted explanation of the statement of 1911 above set forth, I am setting forth herewith the complete statement of Jang Sing under date November 18, 1911, found in Exhibit D at page 1 and 2 thereof, which refutes absolutely the contention that the witness was confused by the interpreter, and also that he was led to believe in answering the question propounded to him at the close of his examination respecting his mariage, that he was being questioned respecting the marriage in this country only. The explanation offered by counsel in their presentation of their case before the department as well as in their brief filed herein at page 43 thereof is that the state-

ments relating to his marriage were totally and absolutely untrue, and in addition that the statements that he had no other name and had never been known by any other name, and that he had never been to China, were likewise untrue. The reason for so stating, however, is said to be that the witness believed his status under the immigration law was fixed and determined for all time as set forth in his regular certificate of residence, and he having registered as a laborer believed, of course, that his status always remained such in the eyes of the immigration authorities. This is the reason why he testified that he was only known under the name of Jang Sing, the name appearing on his certificate of residence; notwithstanding the fact that in 1907 this primitive old Chinese obtained from the same immigration authorities the status of a Chinese merchant in the short period of four years *prior* to the examination in question. Likewise they would have you believe it was the reason for denying his marriage, and this is held to be only a "supposed conflict in the testimony of this witness." In view of the explanations offered there is admittedly little or no probitive weight or value to be given any of this witness' testimony. Of course it does not impeach him as a witness. Of course it does not say that his entire testimony of 1911 admittedly is false from beginning to end. Another explanation of the father's 1911 testimony is set forth in the argument advanced by counsel for applicant before the Department of Labor that he gave answers to the questions as he did for the purpose of suppressing his trip in the status

of a merchant in 1907 and 1908 because if "he had disclosed his marriage in China at that time that would naturally have superinduced a barrage of questions." The 1911 testimony of the alleged father in full follows:

UNITED STATES IMMIGRATION SERVICE
CHINESE DIVISION

FRESNO, CALIFORNIA, NOVEMBER 18, 1911

Ser. No. 830
Gang Sing
Labor Departing
See Yip dialect.

W. H. Webber,
Inspector.
Chin Jack,
Interpreter.
Hermansen,
Stenographer.

Interpreter originally speaks See Yip.

Applicant Sworn.

Q. What are your names? A. *Gang Sing; no other name.*

Q. Were you ever known by any other name? A. No.

Q. How old are you? A. 48.

Q. What year were you born? A. TG 3, Seuk Ham YPD.

Q. When did you first come to the United States? A. KS 8.

Q. Where do you live in this country and what is your occupation? A. *Had a restaurant and sold it;* name of restaurant Chung Hing.

Q. When did you sell it? A. *Feb.*

Q. What have you been doing since then? A. Cooking oil camp of Standard Oil Company, Mallon, Cal.

Q. Then you have been away from Reedley since Feb.? A. Yes.

(Applicant registered under certificate of residence No. 91679 Jan Sing, occupation cook, residence Bakersfield, dated Bakersfield, March 19, 1894, photograph of this applicant and also the description tallies with the certificate.)

Q. How old were you when you registered? A. Do not remember.

Q. *Have you been to China?* A. *No.*

Q. How long did you live in Reedley? A. *Four years.*

Q. Did you have a restaurant all the time you were there? A. *Three years.*

Q. How much did you sell your restaurant for? A. $340.

Q. How much did you make during the three years you were there? A. Averaged $1100 a year.

Q. How much did you make while you were cook at the oil camp? A. $60 per month.

Q. When did you quit work at the oil camp? A. Latter part of August present year.

Q. Have you been doing anything since August? A. Cooking for threshing machine outfit.

Q. How much did you make a month working for them? A. $2.50 per day.

Q. *Have you a family in this country?* A. *No.*

Q. Have you any property in this country? A. No.

Q. Does anyone owe you any money? A. Jung Hing Ying; farmer Reedley, California.

Q. How far from Reedley? A. *One or two miles.*

Q. Does he own a farm? A. No.

Q. Who does he farm for? A. Leases.

Q. How large a farm? A. 40 acres.

Q. How long have you known him? A. Ten years.

Q. Where did he live when you first knew him? A. Fresno.

Q. How long has he lived at Reedley? A. *Six or seven years.*

Q. How much does he owe you? A. Over $1,000.

Q. How long has he owed it to you? A. *Nearly four years.*

Q. How did you loan him the money? A. Different times.

Q. Why did he borrow the money from you? A. Investment in farm and also to buy fruit.

Q. Has he given you any note for the amount he owes you? A. Only a book account.

Deposits.

(June 2-08)	KS 34-5-5	400.	
(July 4-08)	6-7	150.	
(June 29-09)	ST 1-4-29	300.	
(July 12-09)	5-25	150.	
(July 30-10)	ST 2-6-24	350.	1350.

Withdrawals.

KS 34-10-9	100.	
ST 1-10-20	100.	
2-8-15	50.	
9-20	50.	300.
Balance due applicant		$1050.

Q. *Where was he when you let him have this money?* A. *Reedley.*

Q. Whereabouts? A. Sue Lee Co.

Q. Did you send him any money when you were in Bakersfield? A. No.

Q. Is he going to pay any of it back before you go to China? A. No.

Q. *Have you enough money to go to China and return?* A. *Yes.*

Q. *Are you married?* A. *No.*

Q. *Were you ever married?* A. *No.*

Q. Have you an interest in any mercantile establishment? A. No.

Before leaving the subject of the 1911 testimony I desire to direct the attention of the Court to other discrepancies affecting the credibility of this witness.

He testifies therein that he had resided for four years in Reedley; during said time he had a restaurant for a period of three years; that he sold the restaurant in February of 1911, and that after that time he worked as a cook for different concerns; that testimony discloses that he was, according to his then statement in Reedley in 1907 and 1908. Further, he testifies that he had owing to him from a farmer near Reedley the sum of over a thousand dollars, money which he lent the farmer at Reedley. He substantiated this by introducing a book account which account is set out in full in the record. The American reckoning is set opposite, in brackets, the dates specified in the book account the money was advanced in Reedley to the debtor. It is to be noted in this regard that the first deposit was made in June 1908, and the second in July 1908, at a time when witness now contends he was in China, for he claims to be one and the same person who left the United States on November 16, 1907, and returned on September 27, 1908, under the name of (Jeng) Ah Fook, Ex. B herein. In this connection it is noted that Exhibit B discloses Jang Ah Fook as a merchant, a member of the firm known as Hong Sing Kee Co., that he was a bookkeeper and salesman, (Exhibit B, pages 2, 2A) in said firm and had been a member of said firm for five years preceding his trip in November, 1907. (Exhibit B, page 3.) Furthermore, it appears that one Jung Sing, under which name the witness' record appears in the 1911 case, is also a member of said firm, (see line 24, page 1, Exhibit B); note also that the debtor of Jung Sing

in 1911 was sworn and testified and produced a book with accounts in it in exact accord with that produced by the applicant Jung Sing to support his right to depart as a laborer having $1000 in debts owing to him in this country. (Ex. D page 3.)

The study of this 1911 testimony has been made for the purpose of showing that the alleged father is wholly unworthy of credit, and has in fact by his present claims impeached himself before the Department. His counsel admits he perjured himself in 1911, but why then assume that he has not perjured himself in 1922 and 1923? They must concede likewise that his witness in 1911 perjured himself—why then assume that the witnesses produced by him in 1922 and 1923 are telling the truth?

It is of interest to note that the alleged father at no time whatsoever answers to the name of (Jang) Ah Fook. In Exhibit A, at page 120, under date January 29, 1923, answering the question: "State all the names by which you are known," he answers, "Jang Sing, Jang Wey Ming, married name." Exhibit A, page 29, under date October 2, 1922, he is asked the same question, and he gave the same answer as given on January 29. In 1911 he likewise answered the question "What are your names" in this wise: "Gang Sing, no other name." Now, in 1907 the person departing then did so under the name of (Jang) Ah Fook, and the affidavit made by two white persons to establish the mercantile status of Ah Fook certifies "that said Ah Fook is

a merchant and active member of the mercantile firm of Hong See Kee, and that the said Ah Fook has for three years last past been a merchant and resident of Fresno, and after investigation are fully convinced that the said Ah Fook is a bona fide merchant," and then they set out the members of the firm, naming five persons, including Ah Fook as one, and Jung Sing as another. It would seem therefore the contention of Jang Sing that he is one and the same person as Ah Fook would require him to say in answer to the question, "What are your names, and what names are you known by" that he was known by the name of Ah Fook, whereas at no time has he so testified; in fact, his first testimony in the present case, found at page 29, Exhibit A, gave his departure for China in 1906 and his return therefrom in 1907, without making mention at all of the name Ah Fook, and it was not until the case was first re-opened by the local office at the request of his counsel that the name Ah Fook was suggested under which to look for a record of the earlier and essential trip. Nor would it seem to be an answer to this situation to show, as counsel for applicant seeks to do, though there is nothing in the evidence to support it, that the name Ah Fook was a business name of this witness, for the business was conducted under a firm name, namely Hong Sing Kee Company, and the partnership list included the names of the members none of which were identical with the firm name. (Exhibit B, pages 1 and 3.)

Taking up the testimony of each of the five witnesses produced by the alleged father in behalf of the applicant herein, let us examine whether or not these witnesses by the record in this case are worthy of credit. The identifying witness Wong Lim Young on the 4th day of February, 1922, made an affidavit, found on page 1 of Exhibit A, in which he states "that this affiant last returned from China Ex S. S. "Manchuria" April 19, 1914; that while in China affiant saw Jang Dao Theung, the lawful minor son of Jang Sing, and is able to identify him." This affidavit was prepared by counsel for applicant and was submitted in his behalf by his counsel. On page 23 of Exhibit A is found the testimony of this identifying witness and therein he states that he went to China in 1918 and returned in September, 1919, and that he had been directed by Jang Sing to see his family there, and that he saw applicant in a market there in a village some little distance from applicant's home village; all of which, of course, is in direct conflict with the statement made in his affidavit.

The second witness offered to support the contention that the alleged father was in fact married when he made the 1911 statement to the countrary is Hong Gong Chong, (Ex. A, page 108) who testifies under date January 29, 1923, as follows:

> "I made two trips to China, went last time in November, 1921, on the Golden State, returned in October, 1922, on the S. S. China. I went

to China when I was three years old, returned in 1896. I cannot identify it (the son's photograph) because I do not know that I ever saw him. * * * I did not visit his (Jang Sing's) home, but I met his wife in the streets of their village (p. 107) * * * She told me that her eldest song Jang Dao Theung had come to the United States and she had not heard whether he was with his father, and she asked me to find out about it as soon as I got here. * * * Applicant was in his native village when I got to China. * * * I did not know that this boy was coming to the United States or I would have gone to see them before he came. I promised Jang Sing that I would try and see his family while in China. Applicant came to the United States on the Nanking about one month before I came back on the China in October, 1922." (Page 106.)

He was questioned regarding the contents of the affidavit signed by him found in Exhibit A, page 95, and he stated he understood the contents of this affidavit when he signed it. The affidavit states as follows:

"*A great many* years ago your affiant had *visited his home and seen his wife and seen this applicant as a baby. That upon intermediate visits* to China made by your affiant he has known and heard of the family of Jang Sing, and has known during all of these years that he had a wife living in the Shuk Hom Village and that he had two children, this applicant and a younger brother. That your affiant has not *seen the wife of Jang Sing or this applicant for a number of years,* but

knows from hearsay and conversation of fellow villagers of Jang Sing that his wife and two children continually resided in that village, and *occasionally when your affiant was in China and visited around* the different villages *he has seen the wife and children,* although he did not personally call *upon them within recent years so that he could positvely* identify this applicant, but the fact that the said Jang Sing has a wife in China and children there, is now, and has been known to your affiant for upwards of ten years last past."

The only explanation the witness gave when questioned respecting these conflicting recitals in the affidavit and his testimony was that the lawyer misunderstood him and made the paper out wrong. That was error on his part through a misunderstanding; and this is one of the affidavits that was procured by applicant's present counsel for the purpose of obtaining a re-opening in this case. It is to be noted that the affidavit does not in any respect conform to the testimony of the witness or the records of the Immigration office respecting the trips to China made by this witness. He had not visited China according to his own testimony from 1896 to 1921, so that all that about visiting the home of Jang Sing's wife and seeing this applicant as a baby; the intermediate visits to China spoken of therein; that affiant has not seen Jang Sing nor this applicant for a number of years, but occasionally when your affiant was in China and visited one of the villages he has seen the wife and

children of Jang Sing, although he did not personally call upon them within recent years," is all humbug and nonsense, and there is not a word of truth in it. Giving full credence to his testimony, the most that can be obtained from it is that he met a woman in the streets of Shuck Hom Village, whose son was seeking admission to the United States, and she had not heard whether he was with his father and she asked him to find out about it.

Another witness produced was Wong Bing Sing, whose testimony was given the same day as the last-mentioned witness's, and is found in Exhibit A, page 116. This witness likewise has no personal knowledge respecting the relationship of the applicant and his alleged father. This witness states:

"I do not know his son. I never saw him."

He claims on page 115 that he addressed and mailed to China certain letters for Jang Sing. They were not, however, addressed to the wife of Jang Sing nor were they sent to her village. They were addressed to Ching Choon Lun Company, Hong Kong, China, and they were sent by that Company to his wife in China, which is certainly first-hand information and bears out fully the claim that the alleged father sent money through this witness to his wife and family in China. As a matter of fact, upon Ah Fook's return to this country in 1908 he was to all intents and purposes a merchant with an established business in Fresno, California. Why, therefore, go to this witness Wong Bing Sing, a

member of the Duck Lee Company in Fesno, California, to transfer moneys to a firm in Hong Kong, China, for transmission to his alleged wife? Considering this witness's testimony, it is worth while to refer to the affidavit submitted by him, found in Exhibit A, page 97, in which he states in part as follows:

> "That your affiant *for many* years last past has handled the financial affairs of Jang Sing in the matter of transmitting money for him, and that your affiant has for *eight or nine years last past* received money from Jang Sing and transmitted the same to his wife in China, the said wife's name being Som Shee and her residence in Shuk Hom Village, Yen Ping District. That your affiant personally knows that Jang Sing is married, and has been during all the years in question, because of his making his yearly remittances through your affiant's store, *to his wife at their home in China* for her support and maintenance and that of their two sons."

Of course, during four of the eight or nine years last past Jang Sing himself has been a merchant actively engaged in business in *Fowler,* California, see Exhibit A, pages 12 and 15, and is a bookkeeper for the firm, and has been since February 1, 1919, yet notwithstanding that fact the witness Wong Bing in the city of Fresno has attended to the transfer of the yearly remittance for Jang Sing of Fowler, Calif., to the latter's wife in China, or rather to a firm in Hong Kong, China.

There remains the testimony of two witnesses to consider: Sam Yick, also known as Jang Lou Wong, and his wife, Lee Jen. These two claim to have personal knowledge of the marriage of Jan Sing to the alleged mother of the applicant. Their testimony is to be found in Exhibit A, page 114 and 111. Sam Yick and his wife had passage on the same boat as Ah Fook in November, 1907, and returned in April, 1910.

Sam Yick has not been to China since. (Exhibit A, page 114.) His home in China is 4 or 5 Li from the home of the applicant herein. (Page 113, Ex. A.) He recalls being present at the wedding, but never visited the home of Jang Sing thereafter. (Pages 112 and 113, Ex. A.) Claims to have been in China when the child was born and saw him frequently up until the time he was two years of age, but would not now know him.

Lee Jen testifies that she, too, was at the wedding of Jan Sing and the mother of applicant, and that she saw the applicant first when he was a few weeks old, and that she visited the home of applicant while in China.

In this connection it is interesting to refer to the affidavit executed by these two witnesses on the 14th day of November, 1922, found in Exhibit A, pages 99 and 98, wherein Sam Yick states that he is of the same clan as Jang Sing and that during the three years of the residence of your affiants in China they frequently *visited the home* of the said Jang Sing

also known as Jang Weh Ming, and *saw him and his wife there upon many and frequent occasions.* This affidavit also was prepared by their own counsel and in respect to the matter of visiting the home of the wife is in conflict of the testimony of Sam Yick given before the Department. Throughout the testimony of all of these witnesses it nowhere appears that any of these witnesses knew this applicant as Ah Fook. There is something also worthy of note in regard to the testimony of Lee Jen and her husband Sam Yick which is to this effect, Exhibit A, page 110, under date January 28, 1923, Lee Jen states:

> "I have three children, two sons and one daughter; oldest son is Jang Fun, about 30 years old, living in Bakersfield; next son is Jang Yick Gam, 14 years old, living with me in Bakersfield; my young daughter Jang Oy, four years old, living with me in Bakersfield. My oldest son is my stepson. He is the son of my husband by his first wife."

This statement of the wife concerning her family is in direct conflict with the representations of the husband respecting his marital status and his children found in Exhibit E, at page 12, wherein the father, under date of April 22, 1910, states he has never had but one wife and that his family consisted on that date of two children, twin boys, Jung Yuck Gom, 4, and Jung Yick Ngon, 4 years of age; and Exhibit E, page 5, under date of November 4, 1907, in which the father under oath testifies that he has

no sons or daughters. Also, Exhibit F, page 15, in which the same testimony is found, and the testimony of Lee Gan under date of April 22, 1910, found in Exhibit F, page 14, to the effect that she has but two children, twin boys, born during a visit to China, from which she was then returning. Notwithstanding the foregoing testimony, Jang Fun, the alleged step-son of Lee Jen, obtained admission as the son of Sam Yick by a former wife, and is now residing in Bakersfield, as appears from page 1 of Exhibit E, as well as from Lee Jan's testimony, page 110 of Exhibit A.

It is believed that the full presentation of all the facts in this case is in and of itself sufficient to justify the decision of the Department excluding this applicant from admission to the United States, and it is likewise believed that the full presentation of facts disposes of the points of law presented and argued by counsel for appellant. We, therefore, wish to give only a very brief consideration to each of the points raised in appellant's brief in the order they are presented.

I.

QUESTION OF PROCEDURE.

The sole contention of appellant is that the failure to question the alleged father respecting his 1911 testimony at the original hearing before the port officials, the original denial on the first appeal by the Secretary of Labor at Washington and his

expression of opinion at that time respecting the failure so to examine the alleged father respecting his adverse statements made in 1911 indicates that the re-opening when ordered upon their request therefor and by reason of authority submitted by the appellant, was nevertheless a mere naked procedure done not for the purpose of affording applicant a proper and fair consideration of the case presented anew, which he had a right to expect upon the re-opening granted to him, but for the sole purpose of correcting the record and preventing the applicant from obtaining a hearing *de novo* before a judicial tribunal. There is nothing whatsoever in the record to sustain the inference drawn by counsel for appellant that the Secretary of Labor, in directing a rehearing, was actuated by other than the highest motives and in conformity with his best judgment and proper practice. The order directing a rehearing was made and was based upon the Low Joe case, presented by counsel for appellant as the ground for asking the same. A full and fair hearing was had before the local authorities. At no time whatsoever were any witnesses sought to be presented denied a hearing, and all the reference in appellant's brief respecting a situation where witnesses were denied the right to be examined, has no bearing whatsoever on the question involved in this case. Our answer upon the point raised by appellant that the department, first improperly refrained from questioning the alleged father with reference to his 1911 statement

respecting his marriage, and secondly, with reference to the rehearing awarded by reason of such failure and the claim that the rehearing was awarded not in good faith but with *mala fides* and merely for the purpose of making a record apparently good against attack in the courts, is that from the outset and before the local authorities had concluded their case the applicant and his counsel were advised of the existence of the 1911 statement, and that the same was the controlling reason for denying his admission; that an opportunity was given after such knowledge to present further evidence; that none was so presented and no explanation sought to be made for the said 1911 statement at that time; that on appeal the question was raised and additional evidence, in the form of four affidavits, was submitted for the purpose of obtaining a rehearing wherein an explanation could be made and evidence to overcome the damaging admission presented; that the department considered these matters, but considered that the applicant had had an opportunity in due time to have presented the evidence now sought to have introduced, and therefore denied the appeal; that upon the earnest solicitation of counsel for appellant and the consideration of the case presented by them they deemed that notwithstanding their own judgment as theretofore made that the hearing was in all respects fair, they must bow to the ruling of the court on the question of fairness as enunciated in the Low Joe case presented by counsel for appellant and in so doing

acceded to the request of counsel and awarded a rehearing. So that it is thus made clear that the Secretary, in considering the action of the courts and in his attempt to conform thereto, did what his duty as an official required him to do. It is contended that there was no unfair treatment of the applicant as disclosed by the record or fairly to be inferred therefrom. On the contrary, the record shows that the Secretary's action in re-opening the case shows his desire to accord the applicant fair treatment as dictated by the decisions of the courts in like cases.

The general presumption of law is that in absence of *proof* to the contrary credit should be given to public officers who have acted *prima facie* within the limits of their authority for having done so with honesty and discretion, or as expressed in the maxim, *omnia praesumuntur rite esse acta.*

1 *Greenleaf Ev.* Sec. 38;

Schell v. Fauche, 138 U. S. 562; 34 L. Ed. 1040;

Hayes v. U. S., 170 U. S. 637; 42 L. Ed. 1174;

Sabariego v. Mayerick, 124 U. S. 261; 31 L. Ed. 430;

United States v. Ross, 92 U. S. 281; 23 L. Ed. 707.

An inspection of the record does not show that applicant was denied any substantial right to which he was entitled either under the law or the rules and regulations in such cases made and provided,

and it is now well settled that in the absence of such showing the petition should be denied.

Chin Yow v. U. S., 208 U. S. 8.

It is true that in the present case the alleged father was not immediately confronted with the prior statement. Before the case was closed, however, the alleged father was given full opportunity to explain the conflicting statements. The attorney for the appellant claims that the case of the applicant was prejudiced because the alleged father was not immediately asked to examine his prior statement at the time he first appeared before the port officers. It is the contention of the government that he had this opportunity so to do in the first instance or rather before the case went to Washington, but be that as it may, the explanation of the alleged father was received and considered during the course of the hearing and he had full and ample opportunity to explain. Whether the explanation was made early or late did not affect the substance of the explanation.

It is well settled by the decisions that informality of hearings by immigration officers does not establish unfairness. Administrative hearings from the very nature of the investigation must be of a summary character.

Chin Yow vs. U. S., 208 U. S. 8;
Sibray v. U. S., 227 Fed. 1.

They need not be conducted according to procedure

and rules of evidence applied by the courts and where essential justice is attained the decisions hold that the courts will not interfere with the findings of administrative officers. All that is required is to establish the truth by fair and reasonable means.

Fong Yue Ting vs. U. S., 149 U. S. 698;
Ex Parte Chin Loy You, 223 Fed. 833;
In re Madeiros, 225 Fed. 90.

It is stated by counsel for appellant that it is now and has been for some time the policy of the immigration service where prior adverse statements exist as to marital status or paternity inconsistent with the statements developed in the case under examination to require that the immigration officers at the port of entry should regard the prior statements as a bar which would preclude the existence of the relationship claimed to exist at the later date.

In this counsel is in error. No such policy has been promulgated or followed by the port officers. While the question presented in this case has arisen in other cases both before the department and the courts, there are no instructions expressed or implied which have for their purpose the influencing or controlling of the decisions of subordinate officers at the ports of entry.

Mr. M. Leland Hendry, attorney for the present applicant, who represented the applicant before the

Secretary of Labor, bears witness to this in his letter to the Department of December 23, 1922, (Exhibit A, page 68), wherein he states:

> "In these prior statement cases, the Department has always taken the ground that where the preponderance of the evidence was that the statement was incorrect, the said statement in that event will not be considered; in other words, preponderance of the evidence will govern on any question of fact, and as I understand it that is the present rule of the Department and has always been."

Furthermore, the Department is on record in the case of *Chang Wo*, Bureau #54005/41, in which the appeal was sustained by the Department on September 15, 1915. The case was one concerning prior declarations and it was stated in the decision sustaining the appeal as follows:

> "This case, like that of Lim Hung Sam (54005/31) is referred to me by the acting Secretary (before whom it came originally) because it involves the Department's policy relating to misstatements by alleged fathers at prior examinations. In the present case, as in the other, the applicant is confronted with a prior statement of his alleged father, which, if true, makes it impossible for the applicant to be a son of a person here claiming to be his father. As I have stated in the Lim Hung Sam case, *it is not the policy of the Department to regard these prior statements as estoppels.* When, as in both these cases, the father has testified years ago that he was then unmarried, and now testifies to being the father

> of an applicant born before his prior testimony, he is not precluded from showing that he was in fact married at the time he swore he was unmarried. While his prior testimony is a fact to be considered in arriving at a conclusion it is not an absolute bar to the admission of his alleged son (53560/116). * * * * *
>
> LOUIS F. POST,
> *Asst. Secretary.*"

The conclusion is therefore reached that there is no valid ground of objection to the procedure followed in this case in any particular.

Considering now the second question raised that there was a manifest abuse of discretion in considering the evidence, a fundamental misconception of the basic rules of evidence, we respectfully submit it is our belief that were this honorable court to pass upon the evidence submitted in this case, they would undoubtedly come to the same conclusion as the port officers did whose decision was upheld by the Secretary of Labor on review of the same.

It is conceded by counsel that there is a latitude of discretion vested in the Secretary in the weighing and determination of the evidence, and it is respectfully submitted that the decision in the case at bar falls within the latitude of that discretion, and is not subject to judicial review.

It is conceded by appellant that the alleged father deliberately perjured himself in 1911 and so like-

wise must his corroborating witness at that time have perjured himself if the present claims of the alleged father be true. Such being the case, we desire to refer to the remarks of his Honor Justice Storey, found in the case

Santissima Trintdad and the St. Ander, 7 Wheat. 283; 5 L. Ed. 454-468.

> "If the circumstances respecting which the testimony is discordant be material, and of such a nature that mistakes may easily exist, and be accounted for in a manner consistent with the utmost good faith and probability, there is much reason for indulging the belief that the discrepancies arise from the infirmity of the human mind, rather than from deliberate error. But where the party speaks to a fact in respect to which he cannot be presumed liable to mistake, as in relation to the country of his birth, or his being in a vessel on a particular voyage, or living in a particular place, if the fact turn out otherwise, it is extremely difficult to exempt him from the charge of deliberate falsehood; and courts of justice, under such circumstances, are bound, upon principles of law, and morality and justice, to apply the maxim, *falsus in uno, falsus in omnibus.* What ground of judicial belief can there be left, when the party has shown such gross insensibility to the difference between the right and wrong, between truth and falsehood."

The contradictions in the testimony of this witness are so apparent and are so numerous that no

court of justice could venture to rely on it without danger of being betrayed into the grossest errors.

The case of *White vs. Young Yen,* 278 Fed. 619, is clearly in point. The Court, speaking through His Honor Judge Gilbert, said:

> "We are unable to see on what ground it can be held that the proceedings before the board of special inquiry were unfair. That the board reached the conclusion that the proofs were insufficient to show that the appellees were the sons of Young Fai. Young Fai testified that they were his sons and that he was married in China in K. S. 19-1-16, which would be March 4, 1893. But it is shown that in 1897, on his return from China, when he was permitted to enter as a citizen of the United States, Young Fai testified: 'I am not married.' * * * The discrepancies in Young Fai's testimony as to the dates on which his sons were born may be unimportant, but his contradictory statements as to the fact of his marriage and the date thereof may well have been deemed important by the board of special inquiry, and sufficient to discredit Young Fai's testimony that appellees were his sons. We cannot say, in view of the statements of Young Fai, that the conclusion reached by the board was manifestly unfair. It is not the function of this court in habeas corpus proceedings to weigh the sufficiency of the probative facts. It is sufficient in such a case, if there is some testimony to sustain the conclusion reached. Here there was, we think, substantial ground to dis-

> credit the testimony which was adduced on behalf of the applicants. The judgment is reversed, and the cause remanded, with instructions to remand the appellees to custody."

So that examining the evidence in toto, it would seem that there was ample evidence before the Department to justify and sustain their finding, notwithstanding the fact that the testimony of each of the witnesses produced was in good agreement with the other, but not with their own prior sworn statements, to which attention was called in the findings of the port officials. The fact that the father had in 1911, at a time subsequent to the birth of his alleged son, unqualifiedly and unequivocally stated that he was not then married, had no marriage name, had not been to China since his arrival, was in the United States at Reedley, California, for four years prior to November, 1911, the date this statement under oath was made, that he had made loans of money in June and July, 1908, by which representations he claimed and received the return certificate entitling him to depart in 1911; in view of the fact that corroboration was produced at that time for the said averments in the person of his debtor, Jan Hing Yin; in view of the fact that there is no resemblance between the applicant and his alleged father (Exhibit A, page 36), and in view of the fact that the dates of birth as testified to by the applicant and his alleged father vary by one year; that the testimony of each and every one of the witnesses is not in consonance with the matter

in their and each of their affidavits; in view of the fact that the father was apprised of the reasons for denying the admission of the applicant in the first instance, and was, after a conference with his attorney, permitted and allowed to offer additional evidence respecting one of the grounds for denial, which resulted in the elimination of that objection and was given the opportunity to produce additional evidence to meet the objection raised by the local Bureau arising out of his 1911 testimony, at which time the witnesses later produced were all available to him and must have been were the facts as later represented by them to be, present in his mind at that time, nevertheless he, through his attorney, at that time stated he had no further or additional evidence to submit. Certainly the fact that the trip essential to paternity was made under a name which the alleged father has, according to all the testimony given on other occasions, never referred to as one under which he was known, though in 1907 witnesses were produced to show they had known the then applicant under said name for a period of three years, the fact that the occupation, residence and status of said Jang Ah Fook, 1907 passenger, was different from that of the 1911 passenger Jang Sing, the fact that the inspector's report in Exhibit D, page 5, shows the alleged father to have been a cook and restaurant keeper for a period of seven years prior thereto (1911), the fact that the record respecting the book account of the alleged father introduced in evidence by him and substantiated by

the testimony of his alleged debtor indicates payments in Reedley, California, in 1908, all of which, if true, precludes the truth of the alleged father's present testimony and all of which places doubt and suspicion upon the claim of relationship between the applicant and Jang Sing, and gives support to the finding made in this case that the relationship of father and son does not exist.

The burden of proof to establish the right of an alien to admission rests upon the alien. This burden has not been met by the applicant in this case. The claim is made by counsel admitting that the alleged father's testimony in 1911 is totally false and untrue (appellant's brief, pages 42, 43 and 44), that nevertheless sufficient evidence has been offered to amount to a preponderance of evidence to establish the relationship claimed between Jang Sing and applicant. Their contention therefore, amounts to this, that admitting that the alleged father's testimony is such as to establish the fact that he is not the father yet provided a sufficient *number* of persons whose testimony is in substantial agreement to the effect that he is the father, are introduced, that therefore he is the father and the arbiter of the question of fact must so find. We defy him to sustain this position. The law is positive and definite and places upon the administrative authorities the power to determine questions of fact that arise pertaining to admission of aliens into this country.

Section 17 *of the Act of February* 5, 1917.

This right, were the contentions of appellant to be sustained, would amount to nothing. The law relating to juries as well as to administrative officials or others entrusted with the power to determine a question of fact, is that they are to be the judges of the weight and sufficiency of the evidence, and the mere number of witnesses testifying to a certain condition or situation does not of itself control their decision. This is elementary and needs no citation of authority. As a matter of fact to disregard and treat as false the 1911 testimony of the alleged father, as counsel would have us do to sustain his present position, we must believe that a conspiracy between the alleged father and his alleged debtor at that time was practicad on the Department to obtain the certificate issued at that time. If that be so, is it not quite likely that a conspiracy is now being practiced by the same party to obtain the admission of the applicant?

On the other hand, assuming that it is possible that the 1911 testimony is true, as counsel in their brief submitted to the Department (Exhibit A, page 62) concede possible, then the whole structure of this applicant's case, together with the testimony of the various witnesses, falls to the ground.

This was the question before the port officials and before the department on review to pass upon. The port officials in each instance decided that the alleged father was not in fact and in truth such, and their findings so held. The case of *U. S. vs. Pierce,* 289

Fed. 233, referred to in counsel's brief at page 38, involves a different situation entirely. In that case the port officials, who are the only officials who see and hear the various witnesses in person, decided and believed that the applicant was the son of the witness claimed to be his father, but stated that by reason of the inconsistent stories and the state of the record, they were required to and did find that the relationship did not in fact exist. Their decision was sustained on appeal before the Department and the matter was then taken into court and the decision of the court was that they were obligated to find according to their real decision on the issue before them. The case and particularly the paragraphs quoted by counsel are particularly helpful to sustain the port officials in their decision in the case at bar. There it is said

> "as in any other case, there are no regulating canons for a determination of a question of fact. * * * We have nothing to do with the propriety of the Board's actual decision; it is enough that the statute gives them the final word."

In the instant case the port officials in each of their findings confirm their conviction that the claimed relationship does not exist. They are the only triers of the fact in issue. There is nothing whatsoever to be found in their findings which indicates a belief contrary to their findings.

Further, as has been heretofore disclosed in the

question of procedure, there is no rule whatsoever requiring port officials to find against the applicant where prior adverse statements have been made or any rule directing them to find in a particular manner in any case whatsoever.

The Pierce decision, therefore, and the *In Re Wong Toy* decision, 278 Fed. 562, have no application to the case at bar.

Because of the character of the evidence the administrative authorities were called upon to exercise their discretion in a determination of the matter before them:

> "The exercise of an honest judgment, however erroneous it may appear to be, is not an abuse of discretion. Abuse of discretion and especially gross and palpable abuse of discretion, which terms are ordinarily employed to justify an interference with the exercise of discretionary power, implies not merely error of judgment, but perversity of will, passion, prejudice, partiality or moral delinquency. 29 *N. Y.*, 418, 413."
>
> *I. C. J.*, 372.

It appears from the record that the Secretary took pains to do this applicant full justice. The case was twice re-opened, the record was fully considered and in the exercise of the discretion committed to them by statute they determined that the relationship did not exist and excluded the applicant. There being evidence to support the finding the decision

is not subject to judicial review under the well-settled rule that courts cannot review an order of the immigration authorities excluding a Chinese person where there is any evidence to support the decision.

Ex Parte Ng Kwack Kang, 233 Fed. 478

Frick vs. Lewis, 195 Fed. 693

Ex Parte Kusuki Sata, 215 Fed. 173

U. S. v. Howe, 235 Fed. 990

Ex Parte Chin Doe Tung, 236 Fed. 1017

Lam Fung You vs. Frick, 233 Fed. 393

It is respectfully submitted that from an examination of the entire record it appears that a full, fair and impartial hearing as provided by law was afforded the applicant; that no abuse of discretion appears in the consideration of the evidence or the rules of law pertaining thereto, and that the decision of the immigration authorities finds adequate support in the evidence.

Dated: San Francisco, California, December —, 1923.

Respectfully submitted,

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